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No. 82-623

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

TREASURE ISLE, INC.,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

SUPPLEMENTAL BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

I. PAUL MANDELKERN
Subin, Shams, Rosenbluth,
& Moran, P. A.
Post Office Box 285
Orlando, Florida 32802
Telephone: (305) 841-7470

JAMES M. RUSS
Law Offices of James M. Russ, P.A.
Tinker Building
18 West Pine Street
Orlando, Florida 32801
Telephone: (305) 849-6050

Counsel for Petitioner

THE CASILLAS PRESS, INC. – 1717 K Street N.W. – Washington, D.C. – 223-1220

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Petitioner, TREASURE ISLE, INC.,[1] pursuant to Rule 22.6 of this Court, respectfully files this supplemental brief in support of its Petition for a Writ of Certiorari filed in this case on October 8, 1982.

Subsequent to the filing of Treasure Isle's certiorari petition in this case the Eighth Circuit's opinion in *Bennett v. Berg*, 685 F.2d 1053 (8th Cir. 1982) (petition for rehearing

[1]Pursuant to Rule 28.1 of this Court, Treasure Isle, Inc. states that its corporate relationships as stated in the Petition for a Writ of Certiorari are currently accurate.

en banc on other grounds granted) was reported. That case is a civil action brought in part under the RICO Act against a corporation and other defendants. Count II of the complaint sought equitable relief pursuant to 18 U.S.C. § 1964(a) and alleged that the corporation was the defendant as well as the "enterprise" within the meaning of RICO. On appeal, the Eighth Circuit affirmed the trial court's dismissal of Count II and said:

> The RICO Act proscribes conduct in which one party, the "person" subject to the statute, acts upon an entity, the "enterprise," in such a manner that the enterprise's affairs are conducted through a pattern of racketeering. Appellee *** argues that an "enterprise" was not alleged apart from the "person" who "associated with" an enterprise for purposes of racketeering. We agree as to Count II ***.
>
> *** For this reason, we conclude that the RICO claim as stated in Count II against [the corporation] cannot stand. 685 F.2d at 1061-1062 (footnote omitted).

In so holding, the Eighth Circuit conceded that its interpretation of 18 U.S.C. § 1962(c) conflicts with that adopted by the Eleventh Circuit in the opinion below.[2] 685 F.2d at 1062. Nevertheless, the Eighth Circuit has aligned itself with the Fourth Circuit in *United States v. Computer Sciences Corp.*, ____F.2d____, No. 81-5053 (4th Cir. June 16, 1982), by interpreting Section 1962(c) to mean that the same corporation cannot be both the RICO "enterprise" and the RICO "person."

[2]The Eighth Circuit attempted to distinguish the Eleventh Circuit's decision by describing it as having been reached " *** in [an] unique context in a criminal case." 685 F.2d at 1062. However, the fact that *Bennett v. Berg* involved a civil RICO claim whereas petitioner's case deals with a criminal violation is of no consequence. In either case 18 U.S.C. § 1962(c) requires a separate "person" and "enterprise."

The recent opinion in *Bennett v. Berg* confirms that the question presented in petitioner's case is of great and recurring significance. The irreconcilable conflict between the Eleventh Circuit's decision below and the two other Courts of Appeals make this case appropriate for the granting of this Court's writ of certiorari.

Respectfully submitted,

I. PAUL MANDELKERN
Subin, Shams, Rosenbluth, & Moran, P.A.
Post Office Box 285
Orlando, Florida 32802

JAMES M. RUSS
Law Offices of James M. Russ, P.A.
Tinker Building
18 West Pine Street
Orlando, Florida 32801

Counsel for Petitioner

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